



AGREEMENT FOR APPOINTMENT OF WATER COMMISSIONER

ON UINTAH AND LAKEFORK RIVERS

Uintah Irrigation Project

THIS AGREEMENT made and entered into this 18th day of March, 1940, by and between the United States of America acting herein by Coulsen C. Wright, Superintendent of the Uintah and Ouray Agency, and as such in charge of the Uintah Indian Irrigation Project, hereinafter referred to as United States, and the Associated Water Users of the Uintah and Lakefork Rivers, acting herein through its Executive Committee for and on behalf of the defendant water users in the cases of United States of America vs. Dry Gulch Irrigation Company, et al, Number 4418, and United States of America vs. Cedarview Irrigation Company, et al, Number 4427, both in the United States District Court for the District of Utah, hereinafter for brevity referred to as the Associated Water Users.

WHEREAS, the Federal Court for the District of Utah entered final decrees in both of the above entitled cases and appointed a water commissioner to distribute the waters and enforce the decrees for several years thereafter, and

WHEREAS, in 1931 and prior to the irrigation season for said year the said Court made and entered an order discharging its water commissioner, and permitted the parties thereto to arrange for distribution of water from the Uintah and Lakefork Rivers by agreement or otherwise, and

WHEREAS, from year to year since that time, the parties have employed a water commissioner to regulate the use of water in accordance with the provisions of said Federal Court decrees, and

WHEREAS, there has been no water commissioner appointed for the calendar year 1940, and

WHEREAS, the parties consider it advisable that a water commissioner be appointed to enforce said decrees, regulate the use of, and distribute the water from said rivers during the year 1940;

NOW, THEREFORE, in consideration of the premises and in order to provide for the orderly distribution of the waters of the Uintah and Lakefork Rivers and their tributaries in accordance with the aforesaid decrees of the United States District Court for the District of Utah for the year 1940 unless said Court appoints a water commissioner, the parties hereto agree as follows:

1. That the Associated Water users of the Uintah and Lakefork Rivers is an unincorporated association composed of representatives of water users who were parties to the aforesaid decrees, empowered and authorized by said water users to act through its Executive Committee in all matters relating to the selection of a water commissioner and the distribution of water under and in accordance with existing rights of the parties as in said decrees established

and provided and particularly that they were authorized to make this agreement, all as evidenced by the articles of agreement of the Associated Water users of the Uintah and Lakefork Rivers, a copy of which is attached hereto as Exhibit "A" and made a part hereof.

2. The parties hereto shall appoint and employ a water commissioner for one year beginning January 1, 1940. That this agreement may be renewed from year to year by the mutual consent of the parties expressed in writing.

3. That B. O. Colton Jr. is hereby appointed as Water Commissioner for the Uintah and Lakefork Rivers and their tributaries for the year 1940, for the purpose of distributing the waters of said rivers in conformity with the provisions of said decrees.

4. The said Commissioner shall be paid for his personal services the sum of \$2500, which said sum shall cover automobile and other traveling expenses of the Commissioner.

5. The Commissioner is hereby authorized:

(a) To appoint such deputies and gate observers as in his judgment are necessary to economically and effectually measure and distribute the waters of said streams.

(b) To purchase stationery and supplies and employ the necessary clerical and stenographic assistance.

(c) To comply with the Workmen's Compensation Act of the State of Utah as to himself, his deputies, and other employees, the cost of which shall be allowed as an item of expense to be paid by the parties as hereinafter provided.

6. The salary and other expenses of the Commissioner hereinabove authorized shall be borne by the parties hereto as follows: One-half by the United States and one-half by the Associated Water users, it being understood by the parties hereto that the Associated Water users will apportion among the various defendant or secondary users represented by it, the amount they are obligated to pay the Commissioner on behalf of its water users.

7. In order that the Commissioner may be paid his salary and expenses including the salary of his employees, the parties hereto shall make payments to him as follows:

The United States shall pay one-sixteenth of the amount of the total annual approved budget each month of the irrigation season for eight months. The first payment to become due April 1, 1940. Provided that the final payment shall not be made until the total actual costs for the year are known and such final payment shall be in an amount sufficient to cover the adjusted unpaid balance. And provided further that the foregoing payments are payable and shall be made in accordance with Federal Government fiscal policies and the rules and regulations of the General Accounting Office.

That part of the water commissioner costs to be paid by the Associated Water users shall be made in three installments to be due and payable as follows:

Twenty percent of the total annual budget April 1, 1940; twenty percent July 1, 1940, and the remainder of such total costs as adjusted for the year shall be paid upon notice from the water commissioner as soon as the total costs for the year are ascertained and adjusted.

8. The foregoing items of expense shall be incurred by the Water Commissioner only to the extent possible within the budget which shall be submitted by him within ten days after acceptance of his appointment, which when approved by the parties hereto shall become his budget for the year. In the event work or services are required during the year in excess of the budget, written approval must be obtained prior to incurring any obligation therefor.

9. The Commissioner is authorized to require all water users to install and maintain such gauging stations and measuring devices as he deems necessary for properly measuring and distributing the water of said rivers.

10. In distributing and regulating the use of water the Water Commissioner is authorized and directed to:

1. Withhold water from either or any party who has failed to make the payments above provided for within ten days after notice by the Commissioner that they are in default. Provided, however, that the United States shall not be considered in default as long as its payments are made in accordance with the government fiscal policy and regulations of the General Accounting Office.

2. As to all water users represented by the parties hereto, the Commissioner is authorized and directed to shut off and withhold water from any person wasting it or not using it for beneficial purposes.

3. Shut off and withhold water from all users represented by the parties hereto who do not have proper measuring devices.

11. The Water Commissioner is authorized and directed to insist upon and require all reservoir owners who are represented by the parties hereto, to permit normal flow to pass through their reservoirs at all times to the extent required to meet the direct diversion rights below such reservoirs. In the case of all other such reservoir owners, if any, on said rivers, the Commissioner is authorized and directed to demand that they install, operate and properly maintain such gauging stations and measuring devices as will permit the accurate determination of the amount of water stored and the amount of stored water discharged into the stream, and in the event any such reservoir owner or owners fail or refuse to comply with such demands, he shall promptly report the matter to the parties hereto, for such action as they or either of them may deem advisable.

12. The basis for the proper distribution of said waters for each irrigation season shall be the cropped acreage as required to be submitted to the Commissioner for the previous year except as modified by the additions or subtractions thereto submitted to the Commissioner by affidavit not later than May 1, of the ensuing irrigation season. Provided that each year the water users shall submit their certification of the crop acreage by legal subdivisions under each canal system used for the past year, not later than December 1;

Provided further, that if as between certain water users other methods have been agreed upon, then the Water Commissioner shall permit delivery upon such agreed basis so long as it does not interfere with the satisfaction of priorities belonging to users not parties to said such agreement.

13. If it shall appear that water can be distributed more efficiently through other canals or laterals than those through which it has been distributed in the past and thereby effect a saving of water and at the same time meet the full necessities of the users, and without damage or expense to owners of said canals, the said Commissioner is authorized as an emergency measure only to so distribute said water.

14. The Commissioner may give due regard to all reasonable requirements for water to be used for culinary and domestic purposes. All water users who may need water for culinary and domestic purposes must provide watertight cisterns, wells, or tanks upon their lands to contain such culinary and domestic water. When proper cisterns, wells or tanks have been constructed, water may be sent down the ditches only at reasonable intervals for the purpose of filling such containers.

15. The delivery of water to the respective parties shall be upon a demand basis, unless they agree to prepare and present to the Commissioner a duty of water schedule which shall specify the flow required by each party during the irrigation season. Said schedules shall be in such form as may be required by the Water Commissioner.

16. In the event a water user on either of said rivers makes an agreement with one or more of the parties hereto or those represented herein, wherein it is agreed by the parties thereto that a temporary exchange of water shall be made, either by exchanging stored water for normal flow or water from some other source for water then available to the parties hereto as represented herein, from the Uintah or Lakefork Rivers under their respective priorities, the Water Commissioner shall recognize said such temporary exchange agreement, and permit or cause it to be consummated in accordance with the agreement of the parties, so long and only so long as it does not interfere with or violate the rights of others. Any party hereto who makes such an agreement shall promptly furnish the Water Commissioner with a certified copy thereof.

17. The Water Commissioner is authorized and directed to enforce the terms and conditions of said decree as to all parties to said decree and their successors in interest.

18. The said Commissioner is authorized to have tabulated and analyzed daily sheets showing the quantity of water distributed to the respective users. At the close of the irrigation season, the said Commissioner is authorized and directed to prepare a report showing the daily quantity of water distributed to the respective users, the conditions under which said water was used, the flow of the various streams from which said water was diverted, and a tabulation and analysis of the hydrologic data collected. He shall supply a reasonable number of copies thereof to the parties hereto.

19. In the event the Commissioner encounters problems which he believes require legal assistance in his behalf, he shall report the matter fully and promptly to the parties hereto, who will consult with him and each other, and advise him what if any action they want taken, and arrange for such assistance if they deem it advisable that action be taken.

20. It is understood and agreed that this agreement shall not constitute a binding precedent on any of the parties hereto, and that it shall not constitute a waiver of any existing rights belonging to either party hereto or any party represented by them.

21. It is agreed that if this agreement shall be renewed from year to year as provided for herein, the Project Engineer or other designated representative of the United States shall meet with the Executive Committee of the Associated Water users, at a time and place to be agreed upon for the purpose of appointing the commissioner, fixing his compensation, fix a budget for the commissioner's expense, and make such arrangements as may be necessary regarding the duty of water schedule if one shall then be desired.

22. No member of, or delegate to Congress, or resident commissioner shall be admitted to any share or part of this contract, or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation for its general benefit.

23. Where the operations of this contract extend beyond the current fiscal year, the contract is made contingent upon Congress making the necessary appropriations for expenditures hereunder after such current year shall have expired. In case such appropriation as may be necessary to carry out this contract is not made, the Associated Water users hereby release the United States from all liability due to the failure of Congress to make such appropriation.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

UNITED STATES OF AMERICA

By _____
Coulson C. Wright, Superintendent

ASSOCIATED WATER USERS OF UINTAH AND
LAKEFORK RIVERS

By _____
James Lloyd

Oscar Nelson

J. C. Hacking

E. D. Nyberg

Ben G. Dye

Its Executive Committee

EXHIBIT "A"

ARTICLES OF AGREEMENT OF ASSOCIATED WATER USERS
OF UINTAH AND LAKEFORK RIVERS

For and in consideration of the mutual dependent obligations of each of the parties or companies hereto, this being one of a series of similar contracts to be signed by other persons and companies is agreed as follows:

Whereas the United States by its Secretary of the Interior commenced two certain actions in the Federal Court for the District of Utah to enjoin the water users of Uintah and Lakefork Rivers from taking water therefrom until sufficient water was had to irrigate the lands of its wards being Indian allotments and other Indian lands, and

Whereas, pursuant to said actions certain decrees were entered therein which form the basis of demand for the use of such water, and

Whereas certain differences have arisen between the plaintiff and defendants in said action regarding the fundamental theory of the ownership and rights of distribution of such water, which differences make necessary the further cooperation of such defendants or other water users in order that they may more fully protect the demands and rights of themselves and each party hereto to such water and to its regulation and distribution as they might be lawfully entitled to.

Now therefore, we the undersigned hereby associate ourselves with the other defendants or assignees and water users in the formation of a joint association to be known as the Associated Water Users of Uintah and Lakefork Rivers.

The purpose of organizing such association is to more fully and economically defend and advance our mutual rights and benefits and assure fuller protection and proper distribution of our water and water rights as they may exist.

To more fully carry into effect such purpose there shall be elected an advisory board upon which each company or separate defendant or owner or an individual filing shall have one representative, provided however, that the Dry Gulch Irrigation Company shall have three representatives thereof. The basis and right of voting within such advisory committee shall be one vote for each three hundred acres of water right or fraction thereof as represented by such company or individual filing or filings.

Advisory Board shall select an executive committee of five persons. Such executive committee shall have authority to represent such association in matters effecting all legal proceedings by entering into agreements with the Government for the distribution of commingled water, the selection of a Water Commissioner, and all acts reasonably incident to such participation.

Said executive committee shall organize and may levy assessments on the unit-acre-basis of all individuals or companies joining herein to defray Association expenses incident to discharge of its duties provided that no company or individual shall be assessed on less than three hundred acres.

Meetings of advisory committee shall be held annually on the third Wednesday of each December at 2:00 o'clock p.m. in Roosevelt, Utah, and at any other time upon call of the executive committee.

Each company and individual will properly certify credentials of member or members elected by it to the advisory committee which shall be presented at the annual meeting and signed filed with the secretary of the executive committee.

Executed this _____ day of _____ A. D., 1932.

CC Wright Indian

Attest: _____

Gar. Lloyd Pres Ass. N. U
